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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/267,840	03/12/1999	SCOTT EVANS	EVA-001	7636

7590

02/04/2003

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EXAMINER

BARTUSKA, FRANCIS JOHN

ART UNIT

PAPER NUMBER

3627

DATE MAILED: 02/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SL

DETAILED ACTION

1. The request for a continued prosecution application (CPA) under 37 CFR 1.53(d) filed on October 22, 2002 is acknowledged. 37 CFR 1.53(d)(1) was amended to provide that the prior application of a CPA must be: (1) a utility or plant application that was filed under 35 U.S.C. 111(a) before May 29, 2000, (2) a design application, or (3) the national stage of an international application that was filed under 35 U.S.C. 363 before May 29, 2000. *See Changes to Application Examination and Provisional Application Practice*, interim rule, 65 *Fed. Reg.* 14865, 14872 (Mar. 20, 2000), 1233 *Off. Gaz. Pat. Office* 47, 52 (Apr. 11, 2000). Since a CPA of this application is not permitted under 37 CFR 1.53(d)(1), the improper request for a CPA is being treated as a request for continued examination of this application under 37 CFR 1.114. *See id.* at 14866, 1233 *Off. Gaz. Pat. Office* at 48.

While the Office uses the filing date (and application number) of the prior application of a CPA for identification purposes, the filing date of a CPA under 37 CFR 1.53(d) is the date the request for a CPA is filed. See 37 CFR 1.53(d)(2). Thus, if a CPA of an application (other than for

a design patent) is filed after May 29, 2000, 37 CFR 1.53(d)(1)(i) does not permit the filing of a further CPA, regardless of the filing date of the prior application as to the first CPA (i.e., the filing date used for identification purposes for the CPA). See MPEP 706.07(h) paragraph IV.

A prior CPA was filed in this application on January 30, 2002; therefore, a further CPA is not permitted.

2. Receipt is acknowledged of a request for continued examination under 37 CFR 1.114 filed Oct. 22, 2002, including the fee set forth in 37 CFR 1.17(e). The request for continued examination (RCE) is improper because it was not accompanied by a submission as required by 37 CFR 1.114. An improper RCE will **not** operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application. Since a Notice of Appeal was filed with the Petition to Revive Improperly Abandoned Application filed Oct. 21, 2002, the time period for filing the Appeal Brief continues to run from the date the petition was granted, Dec. 26, 2002. Appellant's Brief is due in accordance with 37 CFR 1.192(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. J. BARTUSKA whose telephone number is 703-308-1111. The examiner can normally be reached on MONDAY-FRIDAY (ALTERNATE FRIDAYS OFF).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT P. OLSZEWSKI or the currently acting supervisor, can be reached on 703-308-1113. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

fjb
February 3, 2003


F. J. BARTUSKA
PRIMARY EXAMINER 2/3/03